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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 SIDNEY ALBERT POTTS,

7 Petitioner,

8 v.

9 MIKE OBENLAND,

10 Respondent.

Case No. C19-5541-BHS-TLF

ORDER STRIKING PETITIONER'S
MOTION (DKT. 13) AS MOOT AND
GRANTING RESPONDENT'S
MOTION FOR EXTENSION (DKT.
15)

11 Petitioner proceeds *pro se* in this 28 U.S.C. § 2254 habeas corpus action.
12 Currently pending before the Court is petitioner's motion "Requesting Court's Guidance
13 as to Joinder or Permission to File a Stand Alone Claim of Actual Innocence" (Dkt. 13).
14 The clerk is directed to strike petitioner's motion as moot as it appears to be duplicative
15 of a prior motion (Dkt. 9) which the Court granted on February 4, 2020 (Dkt. 11).

16 As with the instant motion, petitioner's prior motion, entitled "Requesting Joinder
17 ... or in Alternative, Permission to File Second or Successive Petition," (Dkt. 9),
18 requested guidance from the Court as to whether to "join" petitioner's new habeas
19 claims, including a claim of actual innocence (see Dkt. 9-1, at 5, Dkt. 12-1, at 5) with his
20 pending petition (Dkt. 4), or to file a second petition. Dkt. 9, at 4.

21 Petitioner's first motion (Dkt. 9) was granted by order dated February 4, 2020,
22 and petitioner was permitted to amend his original pending petition. Dkt. 11. In its order
23 the Court noted that "[w]hen a *pro se* petitioner files a new petition in the district court
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1 while an earlier-filed petition is still pending, the district court must construe the new
2 petition as a motion to amend the pending petition rather than as an unauthorized
3 second or successive petition.” *Goodrum v. Busby*, 824 F.3d 1188 (9th Cir. 2016) *citing*
4 *Woods v. Carey*, 525 F.3d 886 (9th Cir. 2008). Accordingly, the Court directed the Clerk
5 to docket petitioner’s original petition (Dkt. 4) and the supplement to that petition filed
6 with petitioner’s motion (Dkt. 9-1) which includes a claim of actual innocence, as
7 petitioner’s Amended Petition (now Dkt. 12).

8 It appears that petitioner may not have been aware that his first motion (Dkt. 9)
9 had been granted when he submitted the current motion (Dkt. 13) because both
10 documents were filed on the same day. As it appears the Court’s order granting
11 petitioner’s first motion also resolves the instant motion, the clerk is directed to STRIKE
12 the instant motion (Dkt. 13) as moot.

13 Respondent has also moved for an extension of time to file his answer to the
14 Amended Petition. Dkt. 15. Respondent’s motion (Dkt. 15) is GRANTED. Respondent is
15 directed to file an answer to the Amended Petition on or before **April 24, 2020**. As part
16 of such answer, respondent shall state whether petitioner has exhausted available state
17 remedies and whether an evidentiary hearing is necessary. Respondent shall not file a
18 dispositive motion in place of an answer without first showing cause as to why an
19 answer is inadequate. Respondent shall file the answer with the Clerk of the Court and
20 serve a copy of the answer on petitioner.

21 Respondent’s answer will be treated in accordance with Local Rule LCR 7.
22 Accordingly, on the face of the answer, respondent shall note it for consideration on the
23 fourth Friday after filing. Petitioner may file and serve a response not later than the
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1 Monday immediately preceding the Friday designated for consideration of the matter,
2 and respondent may file and serve a reply not later than the Friday designated for
3 consideration of the matter.

4 The Clerk shall provide copies of this order to petitioner and counsel for respondent.

5 Dated this 12th day of March, 2020.

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7 Theresa L. Fricke
8 United States Magistrate Judge
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